

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



December 5, 2002

Alternate to Agenda ID# 1199
Quasi-Legislative

TO: PARTIES OF RECORD IN RULEMAKING 00-05-001

Enclosed is the Alternate Draft Decision of Commissioner Henry Duque to the Draft Decision of Administrative Law Judge (ALJ) Thomas previously mailed to you.

When the Commission acts on this agenda item, it may adopt all or part of it as written, amend or modify it, or set aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

As set forth in Rule 77.6, parties to the proceeding may file comments on the enclosed alternate at least seven days before the Commission meeting or no later than December 10, 2002. Reply comments should be served by December 12, 2002. An original and four copies of the comments and reply comments with a certificate of service shall be filed with the Commission's Docket Office and copies shall be served on all parties on the same day of filing. The Commissioners and ALJ shall be served separately by overnight service.

/s/ CAROL A. BROWN (by KH)
Carol A. Brown, Interim Chief
Administrative Law Judge

CAB: mnt

Enclosure

DRAFT

Alternate to Agenda ID # 1199

Decision **ALTERNATE DRAFT DECISION COMMISSIONER DUQUE**
(Mailing Date 12/5/02)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Into
Implementation of Senate Bill 669, Regarding The
Deaf and Disabled Telecommunications Program.

Rulemaking 00-05-001
(Filed May 4, 2000)

**OPINION REGARDING PER DIEM COMPENSATION TO BE
PAID TO MEMBERS OF SPECIFIC DDTPAC SUBCOMMITTEES**

This decision grants in part and denies in part the Deaf and Disabled Telecommunications Administrative Committee's (DDPTAC) Petition for Modification of Decision (D.) 01-07-012 to allow *per diem* compensation to be paid to members of specific DDTPAC subcommittees.

1. Background

The Commission in D.01-07-023 implemented the portion of Senate Bill 669 relating to California's Deaf and Disabled Telecommunications Program (DDTP), and then modified the decision's committee membership and quorum requirements in D.02-01-018.

In this Petition for Modification, the DDPTAC addresses an issue not raised before: compensation for certain subcommittee members. Currently, DDPTAC committee members receive such compensation. However, in a number of instances, the full committee has delegated to subcommittees work related to DDTPAC functions, as follows:

1. **DDTPAC Transition Task Force:** formed to develop recommendations to the Commission on the administration and governance of the programs specified in Pub. Util. Code §§ 2881, 2881.1, and 2881.2, as required by Assembly Bill 1734, which the governor signed on June 20, 2002. Anticipated *per diem* compensation expenses for this Task Force: \$7,500.
2. **Finance Subcommittee:** develops the DDTP's annual budget, reviews the program's annual financial and inventory audits, and develops Request for Proposal (RFPs) for financial services for the program. Anticipated annual *per diem* compensation expenses for this subcommittee: \$2,700.
3. **Personnel Subcommittee:** review DDTP personnel policies and employee benefit packages, evaluates and sets the compensation of the Executive Director, and handles *ad hoc* grievances. Anticipated annual *per diem* compensation expenses for this subcommittee: \$1,800.
4. **California Relay Service (CRS) RFP Subcommittee:** formed to develop specifications for RFP to re-bid the CRS contract, in compliance with Commission order. Past and anticipated future *per diem* compensation expenses for this subcommittee: In 2002: \$24,600. In 2003: \$4,800.

In D.01-07-012, we set the *per diem* reimbursement rate for DDTP committees at \$300 per day, with a monthly cap of \$3,000. However, we denied *per diem* compensation to subcommittees.

2. Discussion

A. Commission's *Per Diem* Criteria

We have a well-established policy regarding the payment of per diem compensation to members of boards and committees ("committees"). That policy does not include payment of per diem expenses to subcommittees except in unusual cases. The policy is set forth in D.00-10-028, D.98-07-098, D.98-02-040,

D.97-12-105, D.97-12-104, D.97-09-117, and D.97-03-069. The components of this policy are as follows:

- *Per diem* is not paid to committee members who are employees of (1) public utilities, (2) State governmental agencies, or (3) organizations with funding available to support the member's participation in the committee.
- *Per diem* is not paid directly to committee members who are employees of a non-State governmental agencies, trade associations, or community-based organizations. Instead, *per diem* is paid to the member's employer unless the member can show justification for receiving the *per diem*.
- The amount of *per diem* is \$300 for each day of meetings, and \$200 if the meeting lasts for less than approximately two hours. There is no monthly cap on the amount of *per diem*.
- There is no *per diem* for preparation work **or meetings of any subcommittees**.¹
- Committee members are not eligible to receive intervenor compensation pursuant to Pub. Util. Code § 1801 *et seq.*, for their work related to the committee.
- A Program Manager or equivalent level approves payment of claims for *per diem*.

While we occasionally have allowed limited term *per diem* reimbursement for subcommittees, we have only done so in special circumstances. For example, in D.98-12-085, we allowed such payment as an

¹ D.00-10-028, 2000 Cal. PUC LEXIS 838, *514; D.98-12-085, 1998 Cal. PUC LEXIS 911, *59; D.98-07-098, 1998 Cal. PUC LEXIS 663, *33; D.97-12-104, 1997 Cal. PUC LEXIS 1102, *27; and D.97-12-105, 1997 Cal. PUC LEXIS 1103, *33.

exception to “our general policy of not creating a *per diem* policy that turns “public service” into “regular employment”:

The decision whether to broaden the circumstances under which an EETAC member can receive compensation hinges on whether we believe that subcommittee meetings are a necessary and efficient way for the EETAC to accomplish the numerous tasks facing the Committee in the near term. The proposed plan clarified the kinds of activities that the EETAC subcommittees will be involved in. We believe that these activities are an integral part of creating and implementing an effective CBO-based outreach effort, and may be more effectively and efficiently accomplished by subcommittees rather than full Committee meetings. In recognition of the work to be accomplished, *and for a limited period only*, we will extend the *per diem* and expense reimbursement provisions of D.98-07-098 to Committee attendance at subcommittee meetings that are noticed in accordance with the requirements of the Bagley-Keene Open Meeting Act. We will extend the *per diem* and expense reimbursement provisions to subcommittee meetings until December 31, 1999, unless extended or terminated by further Commission order. *Since it remains our general policy that subcommittees not receive per diem and expense reimbursement*, and since our authorization today is subject to specific conditions and time period limitations, we do not approve a charter amendment to effectuate our order. The charter should remain the same, with this decision permitting the terms of the extended provision.²

In all other cases we have examined, we declined to provide compensation for subcommittee work, citing our general policy.

B. Application of Commission’s *Per Diem* Criteria to this Case

With the exception of the DDTPAC Transition Task Force and the CRS RFP subcommittee, the DDTPAC has made no showing that we should deviate

² 1998 Cal. PUC Lexis 911, at *58-59 (emphasis added).

from our general policy. Both the Finance Subcommittee and Personnel Subcommittee carry out ongoing and regular day-to-day functions of the program. There is no showing that these efforts will be time-limited, are part of a special requirement that the DDTPAC must implement, or avoid the risk, cited above, of turning public service into regular employment. Therefore, we deny the petition as to these two subcommittees.

As to the other two subcommittees, however, we believe the DDTPAC has made the appropriate showing justifying a change from our ordinary policy. The Transition Task Force was set up to implement specific legislation, and its work will be time limited. It is appropriate that implementation take place in a subcommittee that can educate itself about the particulars of the legislation and its implications. Similarly, the CRS RFP subcommittee was established to implement specific requirements imposed by this Commission. Once again, its work will be time limited and specific to a particular project.

We approve the *per diem* requests of these latter subcommittees with conditions derived from D.01-07-012, and with a time limitation. A Program Manager, or equivalent level, in the Commission's Telecommunications Division, shall approve claims for *per diem* compensation. Funds to pay the *per diem* shall come from the DDTP budget. Future audits of the DDTP should be expanded to include an examination of the veracity and accuracy of claims for *per diem*. The *per diem* compensation will extend no earlier than July 12, 2001 (the effective date of D.01-07-012) or later than June 30, 2003. Retroactive application of the *per diem* compensation for these two sub-committees is necessary because much of the work in both cases will have been completed by the time this decision is effective. Unless the *per diem* compensation applies retroactively to July 12, 2001,

neither sub-committee would be able to claim full compensation under this order.

Finally, because this allowance is temporary, the DDTPAC should not revise its governing documents to reflect today's decision.

3. Comments on Draft Decision

The alternate order of Commissioner Henry Duque in this matter was mailed to the parties in accordance with Public Utilities Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure.

4. Assignment of Proceeding

This matter is assigned to Commissioner Duque and ALJ Thomas. ALJ Thomas is the presiding officer for this proceeding.

Findings of Fact

1. The DDTPAC Finance Subcommittee carries out ongoing and regular day-to-day functions of the program that are not unique to the DDTP. This work includes developing the DDTP's budget, reviewing annual financial and inventory audits, and soliciting bids for financial services contracts.

2. The DDTPAC Personnel Subcommittee carries out ongoing and regular day-to-day functions of the program that are not unique to the DDTP. This work includes reviewing DDTP's personnel policies and employee benefit packages, conducting the evaluation and setting the compensation of the DDTP's Executive Director, and handling *ad hoc* grievances.

3. The DDTPAC Transition Task Force exists to implement recent legislation. As such, its functions are not ongoing in nature, and its work will be time limited and specific to a particular project. It is appropriate that implementation take

place in a subcommittee that can educate itself about the particulars of the legislation and its implications.

4. The CRS RFP subcommittee was established to implement specific requirements imposed by this Commission. Its work will be time limited and specific to a particular project.

Conclusions of Law

1. It is this Commission's general policy not to award *per diem* compensation for subcommittee work.

2. On one occasion, the Commission has awarded *per diem* compensation for subcommittee work where the need for the subcommittee was clear and the work was specialized and time limited.

3. It is appropriate to award *per diem* compensation for the DDTPAC Transition Task Force and the CRS RFP subcommittee retroactive to July 12, 2001. Such compensation should be subject to conditions, be time limited, and should not extend beyond June 30, 2003.

4. It is not appropriate to deviate from our ordinary policy in order to award *per diem* compensation for the DDTPAC Finance Subcommittee and Personnel Subcommittee.

5. This order should be effective today.

O R D E R

IT IS ORDERED that:

1. The members of the Deaf and Disabled Telecommunications Program Administrative Committee (DDTPAC) Transition Task Force (Transition Task Force) and California Relay Service RFP Subcommittee (CRS RFP Subcommittee), may receive *per diem* compensation in accordance with the following conditions.

The members of the DDTPAC Finance Subcommittee and Personnel Subcommittee may not receive *per diem* compensation.

2. The Transition Task Force and CRS RFP Subcommittee shall not receive *per diem* if they are employed by (i) a public utility, (ii) State governmental agency, or (iii) organizations with funding available to support the member's participation in the Transition Task Force and/or CRS RFP Subcommittee.

3. For each member of the Transition Task Force and CRS RFP Subcommittee who is an employee of a non-State governmental agency, trade association, or community-based organization, *per diem* shall be paid to the member's employer unless the member can show justification for receiving the *per diem*.

4. The amount of *per diem* provided to eligible members of the Transition Task Force and CRS RFP Subcommittee shall be \$300 for each day of meetings, and \$200 if the meeting lasts for less than approximately two hours, with a \$3,000 monthly cap on the amount of *per diem*.

5. There shall be no *per diem* for preparation work for meetings of the Transition Task Force and CRS RFP Subcommittee.

6. Members of the Transition Task Force and CRS RFP Subcommittee may receive *per diem* compensation for meetings, including those attended by telephone, provided that such meetings are conducted in accordance with the protocols adopted in prior Commission decisions, including following the notice requirements in the Bagley-Keene Open Meeting Act.

7. Members of the Transition Task Force and CRS RFP Subcommittee shall not be eligible to receive intervenor compensation pursuant to Pub. Util. Code § 1801 *et seq.*, for their work related to these Committees.

8. Claims for *per diem* shall be approved by a Program Manager, or equivalent level, in the Commission's Telecommunications Division.

9. Funds to pay the *per diem* shall come from the Deaf and Disabled Telecommunications Program (DDTP) budget.
10. Future audits of the DDTP shall include an examination of the veracity and accuracy of claims for *per diem*.
11. The *per diem* authorization granted herein is effective retroactive to July 12, 2001, and shall expire on June 30, 2003.
12. The DDTPAC should not revise its governing documents to reflect today's decision, since the *per diem* authorization expires on June 30, 2003.
13. The petition to modify Decision 01-07-012 filed by the DDTPAC is granted and denied to the extent set forth in the previous ordering paragraphs.

14. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Commissioner Peevey's Proposed Alternate Decision on all parties of record in this proceeding or their attorneys of record.

Dated December 3, 2002, at San Francisco, California.

/s/ Mary Lou Tousey
Mary Lou Tousey

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY **1-866-836-7825 or (415) 703-5282 at least** three working days in advance of the event.